BLANK
PAGE

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 21 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

against

HALDRED OVERSTREET

PETITION FOR REHEARING

ROBERT L. CARTER,
ANNE GROSS FELDMAN,
MABIA L. MARCUS,
BARBARA A. MORRIS,
LEWIS M. STEEL,
20 West 40th Street,
New York, New York 10018,
Attorneys for Petitioner.

E. H. GADSDEN,
B. CLARENCE MAYFIELD,
of Counsel.

BLANK PAGE

IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

against

HALDRED OVERSTREET

PETITION FOR REHEARING

Petitioner respectfully petitions this Court for rehearing of its decision of April 27, 1966, dismissing the petition for writ of certiorari as being improvidently granted. Mr. Justice Douglas dissented and was joined by the Chief Justice, Mr. Justice Brennan and Mr. Justice Fortas (*NAACP* v. *Overstreet*, — U. S. —, 34 L. W. 3374).

Reasons for Allowance of This Petition

1. The broad implications of this Court's dismissal of the writ of certiorari have become strikingly manifest in the brief period since that decision was handed down on April 27th past. At this writing, petitioner has already been joined as party defendant with its local branch in another civil action involving a factual situation similar to that of the case at bar. The claimed damage matured in September, 1965, but the action was filed on May 1, 1966. Moreover, petitioner is threatened with joinder as a defendant in a similar action in Philadelphia, Pennsylvania, in which its local branch is already involved.

If, in less than a month, petitioner has already incurred the onerous obligation of defending two such actions involving activities of its local branches, the course of future events is not difficult to anticipate. The implications of the immediacy with which these actions arose after the dismissal by this Court of the writ of certiorari in this case are inescapable. Persons throughout the country antagonistic to the work and goals of petitioner have seen and will continue to see in this Court's action in this cause yet another device with which petitioner and its affiliate branches may be harassed and their work—and indeed that of the entire civil rights movement—impeded, if not completely halted. As Mr. Justice Black noted in his concurring opinion in *New York Times* v. *Sullivan*, 376 U. S. 254, 295:

> Moreover, this technique for harassing and punishing a free press—now that it has been shown to be possible—is by no means limited to cases with racial overtones.

Similarly, use of civil process to stultify the activities of other groups, advocating and working on causes unpopular in some circles, is a likely possibility in the future.

The eventual outcome of the civil litigation now pending against petitioner, or apt to arise in the future, is not the issue. Even if ultimately unsuccessful, any suit in which civil judgments are sought from petitioner must be vigorously contested at every level in its course through the state court. Petitioner's experience in the Georgia courts in the instant case, which this Court has left undisturbed, clearly does not warrant an assumption that even spurious claims will be unsuccessful at the state level.

Local branches, heretofore charged under their charters with independently attempting to eliminate racial discrimination and prejudice at the local level through legal means, can no longer assume that their activties of peaceful pro-

test will not subject them, their officers and the national organization to suits for damages. Under the Georgia courts' decisions petitioner will be required to undertake an impossible financial and structural burden which, as a practical matter, would drain all the personnel and funds of the local affiliates and national organization and vitiate any possibility of petitioner continuing its true function of formulating and expressing the broad policies and platforms which the local groups carry out in the context of their local problems.

> These freedoms [First Amendment protection of freedom of association] . . . are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual applications of sanctions.[1]

Thus, this Court's apparent reluctance to discern a federal question requiring review of the issues presented in the case at bar has, however unintentionally, supplied both private litigants and eventually state juries hostile to the aims of petitioner with yet another potent weapon with which to destroy it, or certainly diminish its effectiveness as an organ of peaceful protest against racial discrimination. If the Court leaves untouched what at best can be described as the ambiguous legal standards and inadequate supporting evidence which the Georgia courts utilized to find the requisite agency relationship between petitioner and its local branch, it will not require very astute legal analysis for petitioner's antagonists throughout the country to formulate causes of action ostensibly grounded in areas of purely local state law to harass, impoverish and eventually paralyze petitioner.

> Today a judgment of more than $80,000 is fastened on the national NAACP. Juries hostile to the aims of an organization in the educational or political field, unless carefully confined by meticulous

[1] NAACP v. Button, 371 U. S. 415, 433.

> instructions and judicial supervision, can deliver crushing verdicts that may stifle organized dissent from the views and policies accepted by the majority. (Mr. Justice Douglas' dissenting opinion, *NAACP* v. *Overstreet*, — U. S. —, 34 L. W. 3374, 3375.)

That this Court, or indeed various state courts, may not ultimately permit such transparent transmutation of local law to destroy petitioner's rights under the First Amendment does not answer petitioner's contention that the time to stop such a trend is now, and not in the future. Petitioner's resources both in personnel and funds clearly cannot long support the onus of being required to defend such litigation, nor the burden of paying staggering damage awards of the nature here imposed.

Moreover, the mere existence of the threat that civil process is now available as a means for attacking petitioner's work cannot help but constrain the very formulation of its future programs. The trend of federal legislation and this Court's own decisions in recent years have required those dedicated to restricting Negroes from attaining their full rights as citizens to become less blatant in their techniques. As a consequence, organizations such as petitioner, which are pledged to the complete eradication of racial prejudice and to securing for Negroes complete equality before law in all aspects of society, must meet these more subtle, but no less deleterious, attempts by new and novel approaches. Although such approaches will continue to be within the legal framework petitioner has always utilized, here, although there is no evidence that petitioner sanctioned anything other than peaceful protest, it is held liable under Georgia law and this Court finds no federal issues involved. Petitioner, therefore, does not know what future activity of its local affiliates may be held its responsibility. The debilitating effect on petitioner's effective functioning of potential civil actions for damages which may be held its responsibility, cannot be minimized.

2. a. Mr. Justice Douglas has recited this Court's previous record in striking down indirect methods of frustrating the functioning of petitioner or similar political organizations. He has also cogently pointed out the unclear standards used by the courts below and the paucity of the record which resulted in a finding of agency between the national corporation and the local branch.

> To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit. We have not been slow to recognize that the protection of the First Amendment bars subtle as well as obvious devices by which political association might be stifled. . . . (dissent 34 L. W. at 3375)

While this Court has always been careful to honor the sanctity of state courts' interpretations of local law, it has not hesitated to examine carefully the record of cases involving such interpretations where their effect has been to threaten the constitutional rights of one of the parties.

> . . . it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. *Milk Wagon Drivers* v. *Meadowmoor Dairies*, 312 U. S. 287, 293.

Petitioner's argument does not require this Court to replace the state courts' findings as to evidentiary sufficiency or to formulate its own standards of agency. It asks only that the Court exercise its power and indeed assume its long accepted obligation to review the evidentiary facts to assess their "*constitutional* sufficiency" where, as a result of the state court's application of state 'law,' petitioner's rights under the First Amendment have been sub-

stantially impaired. Under such a scrutiny, petitioner submits, the record in the instant case "lacks the convincing clarity which the constitutional standard demands." *New York Times* v. *Sullivan*, 376 U. S. 254, 285-286.

b. As petitioner sought to show in its principal brief, a finding of agency between petitioner and its local branch was made possible by the trial court through a confusing intermingling of the laws of conspiracy and agency. This Court only recently has been confronted by a similarly unwarranted extension of the conspiracy doctrine under which a national union was held responsible in damages for the illegal acts of its local. In *United Mine Workers Union* v. *Gibbs*, — U. S. —, 16 L ed 2d 218, the Court found that the tort of conspiracy had been employed to hold the national union liable for its local's activities without any showing that the national had authority to stop the illegality, had participated in it or had ratified it. In absolving the national body of responsibility, absent any such showing, Mr. Justice Brennan pointed out at pages 231-232:

> Indeed, a reading of the record in this case gives the impression that the notion of "conspiracy" was employed here to expand the application of state laws substantially beyond the limits to be observed in showing direct union involvement in violence.

The facts in the case at bar are remarkably similar. As Mr. Justice Douglas observed, there is nothing in the record below to show knowledge, authorization or ratification of the branch's alleged misconduct by the national corporation. Rather, the Georgia courts found petitioner's liability solely through its participation in a "conspiracy" with its branch. The evidence of its involvement in the conspiracy consisted only of its affiliation with its local through dues sharing, national conventions, dual membership in local and national organizations and annual reports on local activities by the branch to the national corporation. At the most, this evidence show a "loose relationship be-

tween petitioner and this independently controlled Branch'' (dissent, 34 L. W. at 3375)

> . . . the First Amendment, which commands vigilance lest the rights it assures be denied the ''breathing space'' (*NAACP* v. *Button, supra,* 433) necessary for survival, provides guidance. In my view, it forbids the imposition of liability on a national political association on account of the misconduct of a local branch without proof that the national organization specifically authorized or ratified the conduct for which liability is sought to be imposed. A *general* finding of ''agency'' or ''affiliation'' is not enough . . . (34 L. W. at 3375).

c. When the entire record of the proceedings below is analyzed, it can be seen that the liability of the local branch —upon which the national's liability is ultimately based— is equally flimsy vis-a-vis the local branch's relationship with those directly responsible for respondent's injuries. When this Court limited its grant of certiorari in the first instance to the question of whether petitioner had been ''deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control'', on first blush it appeared to have precluded itself from assessing the even broader constitutional implications of allowing the state courts' decision to stand. However, a liberal interpretation of the words ''persons beyond its control'' certainly could allow this Court to explore the evidence adduced pertaining to the acts of violence and the identity of their perpetrators. The record is replete with instances in which legal responsibility was affixed on the branch (and, as a result of this Court's dismissal of certiorari, ultimately on petitioner) for acts of persons identified only as ''colored'' and in no other way connected with either petitioner or its branch (see, *e.g.,* pp. 193, 202-3, 266, 275, 319-323, 333, 364-365, 367-368, 404-405 of the record of entire proceedings below, on file with this

Court). The general atmosphere created by admission of such testimony which ultimately led to a damage award far out of proportion to respondent's injuries (the satisfaction of which petitioner, for all practical purposes, bears the entire burden) supports an inference similar to that noted by Mr. Justice Black in *New York Times* v. *Sullivan, supra,* at pp. 294, 295, where he found the size of the verdict in the absence of a showing of pecuniary harm to the plaintiff could well have been based on hostility toward the ideas expressed in the newspaper advertisements.

By dismissing the writ of certiorari, this Court has left petitioner in an anomalous position: previously protected by this Court from various subtle as well as obvious devices by which its rights under the First Amendment have been threatened or stifled, it is now faced with yet another technique capable of destroying its effectiveness. "Labeling" of its relationship with its branch as one of "agency" has been permitted to support an exorbitant damage award in this case. In light of developments since the dismissal of the cause, petitioner is threatened with similar awards in the future, although such labeling is, in the context of the proceedings below, but a shallow subterfuge for thwarting petitioner from effectively functioning and exercising those constitutional rights which this Court heretofore has so forthrightly protected.

3. Petitioner asserted to this Court in its brief in chief and in oral argument that the judgment against its local affiliate and officers meant in essence that the national organization would have to assume that obligation. That would have been, however, a moral obligation only, had the Court decided this case in petitioner's favor. Now, it is a legal obligation. In the former case, petitioner could have negotiated with respondent to accept a settlement reasonably consistent with the practical realities of the size of the assets of the Savannah Branch and the individual defendants. Now, however, petitioner is in no such bargaining position.

Petitioner is not a wealthy organization; indeed as of April 30, 1966, it had an accumulated deficit of $112,899.60 and the issue of its basic survival has been very much in doubt unless its financial situation materially improves.

With this decision, however, the prospect of petitioner's economic recovery becomes more tentative. It would be ironic indeed if this Court which gave constitutional sanction to the NAACP and to the whole civil rights and civil liberties movement in *NAACP* v. *Alabama*, 357 U. S. 449, and cognate cases, should be responsible for the stifling of organized peaceful protest which it so carefully protected heretofore.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that this petition for rehearing should be granted, and verifies that this petition is not being filed for purposes of delay.

ROBERT L. CARTER,
ANNE GROSS FELDMAN,
MARIA L. MARCUS,
BARBARA A. MORRIS,
LEWIS M. STEEL,
20 West 40th Street,
New York, New York 10018,
Attorneys for Petitioner.

E. H. GADSDEN,
B. CLARENCE MAYFIELD,
of Counsel.

BLANK
PAGE

IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

against

HALDRED OVERSTREET.

Certificate of Counsel

I, BARBARA A. MORRIS, do hereby certify that I am counsel for petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

BARBARA A. MORRIS

BLANK
PAGE

SUPREME COURT OF THE UNITED STATES

No. 505.—October Term, 1965.

National Association for the Advancement of Colored People et al., Petitioners, *v.* Haldred Overstreet.	On Writ of Certiorari to the Supreme Court of the State of Georgia.

[April 27, 1966.]

Per Curiam.

The writ of certiorari is dismissed as improvidently granted.

BLANK
PAGE

SUPREME COURT OF THE UNITED STATES

No. 505.—October Term, 1965.

National Association for the Advancement of Colored People et al., Petitioners, *v.* Haldred Overstreet. | On Writ of Certiorari to the Supreme Court of the State of Georgia.

[April 27, 1966.]

Mr. Justice Douglas, with whom The Chief Justice, Mr. Justice Brennan and Mr. Justice Fortas concur, dissenting.

In May 1962, a 14-year-old Negro boy complained to his school principal and to his mother that he had been mistreated by respondent. The boy claimed that respondent, the owner of a market at which the boy was employed, had accused him of stealing merchandise and had thereafter slapped and kicked him. The truth of this charge remains disputed. The boy's mother, dissatisfied with the response of the local police, contacted the Savannah Branch of the National Association for the Advancement of Colored People. The Branch responded by organizing a campaign to withhold patronage from respondent. Pickets were established, and customers were asked to refrain from shopping in the market. Although the record does not contain any evidence of misconduct on the part of the Branch's members or officers, the picketing apparently attracted substantial crowds. There were incidents involving the intimidation of customers, blocking of sidewalks, and scattered incidents of violence. The trial judge instructed the jury that they might hold the Branch responsible for the respondent's damages if they found that the picketing was the "proximate cause" of the

misconduct of others.[1] The judge further instructed the jury that should it hold the Branch liable, it might also hold petitioner—the national NAACP—if the Branch were found to be its "agent." The jury held both the Branch and petitioner liable. Damages totaling $85,793 were assessed: this figure includes $50,000 in punitive damages. The Georgia Supreme Court affirmed, — Ga. —, and we granted certiorari, limited to the question of whether holding petitioner, the national organization, liable "for acts performed without its knowledge and by persons beyond its control" denied it rights secured by the Fourteenth Amendment. 382 U. S. 937.

Respondent has suffered economic loss as a result of the conduct of those who blocked his sidewalk and threatened his customers. I assume that nothing in the Constitution bars recovery for his injuries from those individuals. See *Giboney* v. *Empire Storage Co.*, 336 U. S. 490. The courts below found that the Branch was responsible for these injuries, and no questions as to that aspect of the case are now before us. We have only the question whether, given the liability of the Branch, petitioner, the national NAACP may be held responsible for respondent's loss—and for the punitive damages imposed.

The amended complaint alleged that W. W. Law, an officer of the Branch, "in using such tactics was acting in and for the services" of petitioner "as its agent, employee, and servant, within the scope of said agency, employment and service." That allegation was denied by petitioner and the record does not contain one iota

[1] "I charge you that in this case you can consider the effect of the picket[ing]. Did . . . the fact that the pickets were there incite activity upon people who were not at all connected with the organization[?]; and if that was incited by the pickets, *by their mere presence*, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted." (Emphasis added.)

of proof that petitioner controlled, authorized, or even knew of these activities.

Petitioner is a nonprofit corporation organized in New York for the purpose of promoting equality of treatment for Negro citizens.[2] The Branch is concededly an affiliate of that national organization. A portion of the dues it collects are forwarded to the national, and members of the local branch are automatically members of the national organization. Members of the local association can and do attend the annual national convention at which they participate in workshops and discussions relating to NAACP activities. The Branch makes an annual report of its activities to the national NAACP.

That, for all the record shows, is the full extent of the relations between petitioner and the Branch. There is no evidence of any power on the part of petitioner to control the conduct of the Branch. There is no evidence of any effort in past years by petitioner to exercise such control. The Branch officers were not, for all the record shows, national officers. The petitioner did not order the demonstrations nor did it authorize them. The record affirmatively shows that petitioner had no knowledge of the demonstrations against respondent and did not learn of them until they were sent the restraining order that was served upon the Branch president. And nothing in the record suggests "ratification"—even by inaction over a sustained period—of the local's activities against respondent or of similar activities.

---

[2] See *NAACP* v. *Alabama*, 357 U. S. 449, 451–452. Its certificate of incorporation states that its principal objectives are "voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law." *Ibid.*

The standards by which the trial court allowed this "agency" to be measured were, to say the least, unclear. The trial judge instructed the jury that the petitioner was a New York corporation which could "only be represented in Georgia by agents, and the agents must conduct themselves in a manner that is compatible with the purposes of that organization." He then instructed as follows:

> "Now did the National Association for the Advancement of Colored People have an agent in Savannah? Who was that agent? Was it W. W. Law [the Branch's president]? . . . Is that National Association responsible for what the affiliate does? . . . Are they so connected that one is responsible for the act of the other by reason of the agency; by reason of their concerted activities as expressed in this conspiracy? *As the Court sees it, you can't get agency and conspiracy separated in this case.* A corporation may be a member of a conspiracy if its officers and agents take part in it and it furthers the conspiracy. You look to the evidence and see if it preponderates as to these organizations. Was there an agency that bound the National Association . . . ? Did they participate through their agents and members and people who had a right to bind them in this conspiracy?" (Emphasis added.)

These instructions, to which the defendants excepted and assigned as error on appeal, gave the jury little guidance as to the circumstances in which it would be appropriate to hold liable the national NAACP. The remarks of the trial judge in considering petitioner's motion for a nonsuit are, in this respect, revealing: "[S]o far as the evidence is concerned, there [is] no evidence to the effect that any member [of the Branch] was the agent

of the national corporation. *In other words they were just affiliated.*" (Emphasis added.)

To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit. We have not been slow to recognize that the protection of the First Amendment bars subtle as well as obvious devices by which political association might be stifled. See *Bates* v. *Little Rock*, 361 U. S. 516, 523. Thus we have held that forced disclosure of one's political associations is, at least in the absence of a compelling state interest, inconsistent with the First Amendment's guaranty of associational privacy. *E. g., DeGregory* v. *New Hampshire*, — U. S. —; *Gibson* v. *Florida Legislative Comm.*, 372 U. S. 539, 543–546; *Shelton* v. *Tucker*, 364 U. S. 479; *NAACP* v. *Alabama*, 357 U. S. 449, 462–463. Recognizing that guilt by association is a philosophy alien to the traditions of a free society (see *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 245–246) and the First Amendment itself, we have held that civil or criminal disabilities may not be imposed on one who joins an organization which has among its purposes the violent overthrow of the Government, unless the individual joins knowing of the organization's illegal purposes (*Wieman* v. *Updegraff*, 344 U. S. 183) and with the specific intention to further those purposes. See *Elfbrandt* v. *Russell*, — U. S. —; *Aptheker* v. *Secretary of State*, 378 U. S. 500.

The present case contains no less a threat to political association. That the threat comes in the form of civil suits for damages rather than that of direct governmental restraints is of no consequence as we noted in *New York*

Times v. *Sullivan*, 376 U. S. 254, 265. Today a judgment of more than $80,000 is fastened on the national NAACP. Juries hostile to the aims of an organization in the educational or political field, unless carefully confined by meticulous instructions and judicial supervision, can deliver crushing verdicts that may stifle organized dissent from the views and policies accepted by the majority.

This case thus carries us into territory in which principles of state law must be accommodated with overriding federal precepts. The law of agency which a State chooses to follow functions, for the most part, free of constitutional restraint; in our federal system, each State may regulate the relations between principal, agent, and third parties according to its own standards of fairness and sound policy. But when a state policy thwarts interests which the Federal Constitution affords special protection, that state policy must yield. For example, though state law customarily determines whether a particular contract is enforceable, notwithstanding the applicable commercial law a state court may not enforce covenants restricting sale of real property to non-whites. *Shelley* v. *Kraemer*, 334 U. S. 1. While the States may preserve order on the public streets and punish conduct constituting a "breach of the peace" as defined by local law, peaceful expression may not, regardless of the label put upon it, be punished. *Cantwell* v. *Connecticut*, 310 U. S. 296. And see *Edwards* v. *South Carolina*, 372 U. S. 229. Questions of legislative apportionment, though primarily matters of state law, must be resolved in compliance with the Federal Equal Protection Clause. *Reynolds* v. *Sims*, 377 U. S. 533. The same is true of voter registration, *Harper* v. *Virginia State Board of Elections*, — U. S. —. State regulation of the practice of law—more specifically, the rules regarding solicitation of legal business—must yield in favor of the First Amendment

right to join together in a common effort to assert legal rights. *NAACP* v. *Button*, 371 U. S. 415; *Railroad Trainmen* v. *Virginia Bar*, 377 U. S. 1.

In *NAACP* v. *Button*, *supra*, we rejected the State's claim that "solicitation" of legal business is outside the area of freedoms protected by the First Amendment. We said that "a State cannot foreclose the exercise of constitutional rights by mere labels." 371 U. S., at 429. So it should be in this case. Terms such as "agency" and "affiliation" have no talismanic significance. In the context of this case, they obscure rather than promote sound analysis. The question we must answer is whether a national political association can be held reponsible for wrongs committed by those beyond its control in a constitutional system where freedom of expression and association is treasured.

The threats which political organizations of this kind today face were once a great burden on labor unions.[3] Congress acted to relieve that burden by enacting § 6 of the Norris-LaGuardia Act:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

See *Brotherhood of Carpenters* v. *United States*, 330 U. S. 395. We recently held in *United Mine Workers* v. *Gibbs*,

[3] The burdens of civil suits for damages were felt by the trade union movement in Great Britain as well as in this country. See Webb, Sidney and Beatrice, The History of Trade Unionism, 597–604 (1965 ed.); Cole, The British Working Class Movement, 292–296 (1948).

— U. S. —, that an international union could not be held liable for the tortious conduct of a local in the absence of "clear proof" of "participation, authorization, or ratification" by the international union.

We have of course no like statute here. But the First Amendment, which commands vigilance lest the rights it assures be denied the "breathing space" (*NAACP* v. *Button, supra,* 433) necessary for survival, provides guidance. In my view, it forbids the imposition of liability on a national political association on account of the misconduct of a local branch without proof that the national organization specifically authorized or ratified the conduct for which liability is sought to be imposed. A *general* finding of "agency" or "affiliation" is not enough.[4] In the present case, the record discloses

[4] The factors on which the Georgia Supreme Court relied to sustain the finding of "agency" fall far short of showing any specific authorization by petitioner to the Savannah Branch to engage in the conduct condemned below. It emphasized the following points: (1) both the local and the national organizations use the name "N. A. A. C. P."; (2) the petition was served on the Branch president as petitioner's agent, and petitioner made no objection; (3) the Savannah Branch and petitioner shared certain common objectives; (4) members of the Branch were automatically members of the petitioner and a portion of their dues were forwarded to New York; and (5) at national conventions, members of the local were counseled in methods of furthering their efforts in the local district through discussions and workshops. In addition, the court suggested that if there was in fact no agency relation, petitioner "had the option to repudiate or ratify the act, but [it] was required to do one or the other. And where, as here, [it] never repudiated the act, [it is] deemed to have affirmed it."

The record is clear that the first notice petitioner had of the Savannah demonstrations was when the summons was forwarded to it in New York. By this time, a temporary restraining order was in effect. There was, therefore, no opportunity for petitioner to exercise a moderating influence on the local branch. Compare *United Mine Workers* v. *Gibbs, supra,* where the national union had knowledge of the local's violent conduct and never expressly

at most a loose relationship between petitioner and this independently controlled Branch. This record discloses no specific authorization or ratification by petitioner of the acts which the Georgia courts found tortious. Nor is there any evidence of any participation by petitioner in such conduct. The trial judge himself stated that there was no "agency" shown, but only an "affiliation" between petitioner and the local Branch. So weak a link cannot, for the reasons I have stated, warrant holding the national NAACP responsible for the damages sustained.

I would reverse this judgment.

---

disavowed it; we held, nonetheless, that there had been no ratification although we noted that had it made some public statements condemning the violence "our result would undoubtedly be firmer." *Id.*, at —. Moreover, petitioner specifically denied respondent's allegations of agency in its answer filed shortly after the suit was begun.

The more demanding requirements of proof which I believe must be met would be satisfied, for example, in a case where the Branch incurred some liability arising out of its collection of dues. I would expect that since the dues paid to the Savannah Branch are, in part, collected on behalf of the national organization, it would be a simple matter to show specific authority to engage in that activity. Perhaps it might be possible to show specific authorization to engage in the conduct involved in this case; the record does not, for example, show what manner of advice and counsel is given the Branch at national conventions. Whether respondent could meet his burden of proof cannot, of course, be determined from the meager record before us.

END